



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 707

IN THE MATTER OF HAROLD COLE

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Harold Cole pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On February 19, 2004, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Cole. The Commission has concluded its inquiry and, on May 12, 2004, found reasonable cause to believe that Cole violated G.L. c. 268A, § 23(b)(2).

The Commission and Cole now agree to the following findings of fact and conclusions of law:

-Findings of Fact-

1. From 1998 until his retirement in December 2003, Cole was a Randolph Department of Public Works ("DPW") Water Division employee.
2. As a DPW employee, Cole was responsible for reading water meters in the field and reporting back to DPW headquarters. Cole made approximately \$20 per hour.
3. DPW employees work a 7:00 AM to 3:30 PM schedule. They are allowed two 15-minute breaks (one in the morning and one in the afternoon) and a half-hour lunch. DPW employees are not allowed to work on a flextime schedule.
4. During the two years prior to his retirement, while working for the DPW, Cole took long unauthorized breaks at home while on municipal time.
5. Many of Cole's weekly paychecks included payments of \$50 or more for work not done. Cole acknowledges that he received approximately \$10,000 from the town for hours he did not work during the two years prior to his retirement.¹
6. During this period, the DPW was shorthanded due to budget cuts and layoffs.

-Conclusions of Law-

7. Section 23(b)(2) prohibits public employees from, knowingly or with reason to know, using or

attempting to use their official position to secure for themselves or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

8. As a DPW employee, Cole was a municipal employee pursuant to G.L. c. 268A, § 1.
9. The receipt of each payment from the town for hours Cole did not work for the DPW and for which he was not entitled to be paid was an unwarranted privilege.
10. Each payment that included \$50 or more for work not done was of substantial value.²
11. Cole knowingly used his DPW position when he secured these payments.
12. Thus, by repeatedly receiving unearned payments of \$50 or more (totaling approximately \$10,000), Cole knowingly used his DPW position to obtain unwarranted privileges of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2).

-Resolution-

In view of the foregoing violation of G.L. c. 268A by Cole, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Cole:

- (1) that Cole pay to the Commission the sum of \$5,000 as a civil penalty for repeatedly violating G.L. c. 268A, § 23(b)(2);
- (2) that Cole reimburse the Town of Randolph the sum of \$10,000 for unearned payments that he was not entitled to receive; and
- (3) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

STATE ETHICS COMMISSION

DATE: November 8, 2004

¹ Given the lack of documentation, it is impossible to determine exactly how much money Cole received to which he was not entitled.

² Anything worth \$50 or more is of substantial value. *In re LIAM*, 2003 SEC 1114.